APPENDIX A

McCarran-Ferguson Act, 59 Stat. 33-34, 15 U.S.C. § 1011-13

Sec. 1. *Declaration of policy*

Congress declares that the continued regulation and taxation by the several States of the business of insurance is in the public interest, and that silence on the part of the Congress shall not be construed to impose any barrier to the regulation or taxation of such business by the several States.

Sec. 2. *Regulation by State law; Federal law relating specifically to insurance; applicability of certain Federal laws after June 30, 1948*

(a) The business of insurance, and every person engaged therein, shall be subject to the laws of the several States which relate to the regulation or taxation of such business.

(b) No Act of Congress shall be construed to invalidate, impair, or supersede any law enacted by any State for the purpose of regulating the business of insurance, or which imposes a fee or tax upon such business, unless such Act specifically relates to the business of insurance: *Provided,* That after June 30, 1948, the Act of July 2, 1890, as amended, known as the Sherman Act, and the Act of October 15, 1914, as amended, known as the Clayton Act, and the Act of September 26, 1914, known as the Federal Trade Commission Act, as amended, shall be applicable to the business of insurance to the extent that such business is not regulated by State law.

Sec. 3. *Suspension until June 30, 1948, of application of certain Federal laws; Sherman Anti-Trust Act applicable to agreements to, or acts of, boycott, coerion, or intimidation*

(a) Until June 30, 1948, the Act of July 2, 1890, as amended, known as the Sherman Act, and the Act of October 15, 1914, as amended, known as the Clayton Act, and the Act of September 26, 1914, known as the Federal Trade Commission Act, and the

Act of June 19, 1936, known as the Robinson-Patman Anti-Discrimination Act, shall not apply to the business of insurance or to acts in the conduct thereof.

(b) Nothing contained in this chapter shall render the said Sherman Act inapplicable to any agreement to boycott, coerce or intimidate, or act of boycott, coercion, or intimidation.

§ 10b of Securities and Exchange Act of 1934,
48 Stat. 881, 15 U.S.C. § 78j

Sec. 10. *Manipulative and deceptive devices*

It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce or of the mails, or of any facility of any national securities exchange—

* * * *

(b) To use or employ, in connection with the purchase or sale of any security registered on a national securities exchange or any security not so registered, any manipulative or deceptive device or contrivance in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

SEC Rule 10b-5, 17 C.F.R. 240.10b-5

Employment of manipulative and deceptive devices

It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails or of any facility of any national securities exchange,

(a) To employ any device, scheme, or artifice to defraud,

(b) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or

(c) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any

person, in connection with the purchase or sale of any security.

Securities Acts Amendments of 1964,
78 Stat. 565-69, 15 U.S.C. §§ 78*l*(g), 78n

Sec. 3. (c) Section 12 of said Act is further amended by adding thereto the following new subsection.

(g)(1) Every issuer which is engaged in interstate commerce, or in a business affecting interstate commerce, or whose securities are traded by use of the mails or any means or instrumentality of interstate commerce shall—

(A) within one hundred and twenty days after the last day of its first fiscal year ended after the effective date of this subsection on which the issuer has total assets exceeding $1,000,000 and a class of equity security (other than an exempted security) held of record by seven hundred and fifty or more persons; and

(B) within one hundred and twenty days after the last day of its first fiscal year ended after two years from the effective date of this subsection on which the issuer has total assets exceeding $1,000,000 and a class of equity security (other than an exempted security) held of record by five hundred or more but less than seven hundred and fifty persons,

register such security by filing with the Commission a registration statement (and such copies thereof as the Commission may require) with respect to such security containing such information and documents as the Commission may specify comparable to that which is required in an application to register a security pursuant to subsection (b) of this section. Each such registration statement shall become effective sixty days after filing with the Commission or within such shorter period as the Commission may direct. Until such registration statement becomes effective it shall not be deemed filed for the purposes of section 18 of this title. Any issuer may register any class of equity security not required to be registered by filing a registration statement pursuant to the provisions of this paragraph. The Commission is authorized to extend the date upon which any issuer or class of issuers is

required to register a security pursuant to the provisions of this paragraph.

(2) The provisions of this subsection shall not apply in respect of—

* * * *

(G) any security issued by an insurance company if all of the following conditions are met:

(i) Such insurance company is required to and does file an annual statement with the Commissioner of Insurance (or other officer or agency performing a similar function) of its domiciliary State, and such annual statement conforms to that prescribed by the National Association of Insurance Commissioners or in the determination of such State commissioner, officer or agency substantially conforms to that so prescribed.

(ii) Such insurance company is subject to regulation by its domiciliary State of proxies, consents, or authorizations in respect of securities issued by such company and such regulation conforms to that prescribed by the National Association of Insurance Commissioners.

(iii) After July 1, 1966, the purchase and sales of securities issued by such insurance company by beneficial owners, directors, or officers of such company are subject to regulation (including reporting) by its domiciliary State substantially in the manner provided in section 16 of this title. . . .

* * * *

Sec. 5. (a) Section 14(a) of the Securities Exchange Act of 1934 is amended to read as follows:

Sec. 14. (a) It shall be unlawful for any person, by the use of the mails or by any means or instrumentality of interstate commerce or of any facility of a national securities exchange or otherwise, in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors, to solicit or to permit the use of his name to solicit any proxy or consent or authorization in respect of any security (other than an exempted security) registered pursuant to section 12 of this title.

SEC Rule 12h-1, 17 C.F.R. § 240.12h-1

A temporary exemption for insurance companies from compliance with the provisions of clause (ii) of section 12(g)(2)(G)

(a) An insurance company which meets the conditions specified in clause (i) of section 12(g)(2)(G) of the Act shall be exempt from registration under the provisions of section 12(g) thereof during the calendar year 1965 notwithstanding the fact that the conditions specified in clause (ii) of section 12(g)(2)(G) are not met during such period.

(b) Every insurance company exempted under paragraph (a) of this section and meeting the requirements of section (12)(g)(1) as of the last days of a fiscal year ended on or after December 31, 1965, shall file a registration statement within 120 days after such fiscal year end unless all conditions of clauses (i) and (ii) and, after July 1, 1966, clause (iii) of section 12(g)(2)(G) of the Act are met, or the securities of such company are otherwise exempt from registration under section 12(g)(1).

SEC Rule 14a-9, 17 C.F.R. § 240.14a-9

False or misleading statements

(a) No solicitation subject to this regulation shall be made by means of any proxy statement, form of proxy, notice of meeting or other communication, written or oral, containing any statement which, at the time and in the light of the circumstances under which it is made, is false or misleading with respect to any material fact, or which omits to state any material fact necessary in order to make the statements therein not false or misleading or necessary to correct any statement in any earlier communication with respect to the solicitation of a proxy for the same meeting or subject matter which has become false or misleading. . . .

ARIZONA REVISED STATUTES

ARTICLE 11. CONSOLIDATION OR MERGER

Sec. 10-341. *Consolidation authorized*

Two or more corporations may be consolidated, and continued as one of the constituent corporations or by forming a new corporation.

Sec. 10-342. *Consolidation agreement*

When two or more corporations desire to consolidate, a majority of the directors of each corporation affected may enter into an agreement setting forth the terms and conditions of the proposed consolidation, including:

1. Capitalization and number of shares of capital stock of the proposed consolidated corporation.

2. Classes into which the shares shall be divided and the value placed on each.

3. Manner of converting the shares and assets of the retiring corporations.

4. Whether one of the constituent corporations is to be continued or a new corporation formed.

5. Number of directors and officers.

6. Method of carrying into effect the terms of the agreement.

7. Other details necessary to disclose all matters affecting the consolidation.

Sec. 10-343. *Notice of proposed consolidation*

A. Notice of proposed consolidation of corporations shall be given by each corporation affected by publication in a newspaper published in the county in which its principal office is located, once each week for four successive weeks immediately prior to the meeting at which the proposed action is to be voted upon, and by mail to the last known address of each stockholder as shown by the books of the corporation, not less than thirty days prior to the meeting.

B. The notice shall contain:

1. The time and place of the meeting.

2. The value of the assets of the corporation.

3. The amount of its indebtedness.

4. A copy of the agreement of the boards of directors, as provided in § 10-342.

Sec. 10-344. *Submission of agreement to shareholders*

A. The agreement of the boards of directors to consolidate shall be submitted to the shareholders of each constituent corporation, who may vote in person or by proxy for the adoption or rejection thereof at either an annual or special stockholders' meeting.

B. If all outstanding shares in the corporation are of one class and of equal par value each share shall entitle the holder to one vote. If the shares are of different classes or of different par values, relative voting rights shall be upon such basis as the charter or bylaws of the corporation may provide, or in the absence of any express provision, then in the ratios of respective par values, treating each no par share, if any, as of a par value equal to the par value of the outstanding shares of the corporation of highest par value.

C. If two thirds of the stock, valued as provided by this section, is voted in favor of consolidation, the agreement shall be declared adopted and the vote certified on the agreement by the secretary of the corporation so voting. The agreement shall be signed and acknowledged by the president and secretary of the corporation, and its seal affixed thereto.

Sec. 10-345. *Formal requirements for consolidation*

A. If an agreement for consolidation, ratified and certified by each constituent corporation as provided in § 10-344, provides that one of the constituent corporations shall be continued as the consolidated corporation, the certified agreement shall be filed in the office of the corporation commission, and one copy thereof,

certified by the corporation commission, shall be recorded in the office of the county recorder of each county in which one of the constituent corporations has its principal office. The consolidation shall thereupon be deemed consummated and the separate existence of the constituent corporations to have ceased, and the consolidated corporation shall become a single corporation in accordance with the agreement, under its articles and name, possessing all powers and subject to all restrictions and disabilities of corporations organized for profit.

B. If an agreement for consolidation, ratified and certified by each constituent corporation as provided in § 10-344, provides for the formation of a new corporation, new articles of incorporation, reciting the consolidation and naming the constituent corporations, shall be prepared and filed in the manner required by law.

Sec. 10-346. *Transfer of assets and liabilities*

All debts due to, and all property and assets of, each corporation consolidated as provided in this article shall vest in the consolidated corporation, but rights of creditors against and liens on the property of each corporation consolidated shall be preserved unimpaired. The debts, liabilities and duties of the corporations consolidated shall pass to the consolidated corporation, and may be enforced against it in the same manner and to the same extent as if incurred or contracted by, or imposed upon it.

Sec. 10-347. *Payment for shares of dissenting shareholders; valuation*

A. Any shareholder of the corporations consolidating who votes to reject the agreement, and who does not consent to the agreed manner of converting the shares of stock, shall be paid in cash the fair value of his stock, based on its pro rata share of the fair value of the net assets of the corporation of which he is a shareholder as of the time of the consolidation meeting. In the event of disagreement, such value shall be determined by the

court in an action by either the dissenting shareholder or the corporation, and the corporation's existence shall be continued for that purpose.

B. Every shareholder shall be deemed to have consented to such method of conversion unless he gives written notice of dissent to the president, secretary or statutory agent of the corporation not later than two days after the consolidation meeting, and unless he commences an action in the superior court of the county in which the principal office of the corporation is located to fix the value of his shares, not later than thirty days after such meeting. After the hearing the court shall determine the value of the dissenting stock, and the corporation shall pay the owner the sum so determined within thirty days after final judgment, whereupon the stock shall be transferred to the corporation. . . .

* * * *

Sec. 10-349. *Effect of merger or consolidation; rights of shareholders*

* * * *

B. The provisions of this article shall apply to the rights of shareholders of any one or more of the constituent corporations which are domestic corporations.

Sec. 20. INSURANCE

Sec. 20-143. *Rule-making power* (as amended 1966)

A. The director may make reasonable rules and regulations necessary for effectuating any provision of this title.

B. The director shall make regulations concerning proxies, consents, or authorizations in respect of securities issued by domestic stock insurance compainies having a class of equity securities held of record by one hundred or more persons to conform with the requirements of section 12(g) (2) (G) (ii) of the Securities Exchange Act of 1934 as amended, and as may be amended. Such regulation shall not apply to any such company having a class of equity securities which are registered or are

required to be registered pursuant to section 12 of the Securities Exchange Act of 1934, as amended, or as may be amended. Whenever such equity securities of any such company are registered or are required to be registered pursuant to section 12 of the Securities Exchange Act of 1934, as amended, or as may be amended, then, no person shall solicit or permit the use of his name to solicit, in any manner whatsoever, any proxy, consent or authorization in respect of any equity security of such company without having first complied with the rules and regulations prescribed by the Securities and Exchange Commission pursuant to section 14 of the Securities Exchange Act of 1934 as amended, or as may be amended. . . .

Sec. 20-443. *Misrepresentations and false advertising of policies*

No person shall make, issue or circulate, or cause to be made, issued or circulated, any estimate, illustration, circular or statement:

* * * *

3. Making any misleading representation or any misrepresentation as to the financial condition of any insurer or as the legal reserve system upon which any life insurer operates.

Sec. 20-444. *False or deceptive advertising of insurance or status as insurer*

A. No person shall make, publish, disseminate, circulate or place before the public, or cause, directly or indirectly, to be made, published, disseminated, circulated or placed before the public, in a newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio or television station, or in any other way, any advertisement, announcement, sales material or statement containing any assertion, representation or statement containing any assertion, representation or statement with respect to the business of insurance or with respect to any person in the conduct of his insurance business, which is untrue, deceptive or misleading.

Sec. 20-731. *Merger or consolidation of stock insurers*

A. A domestic stock insurer of any kind may merge or consolidate with another domestic or foreign stock insurer by complying with the provisions of general law governing the merger or consolidation of stock corporations formed for profit, but subject to subsection B of this section.

B. No such merger or consolidation shall be effectuated unless in advance thereof the plan and agreement therefor have been filed with and approved in writing by the director of insurance. The director shall give his approval within a reasonable time after filing unless he finds the plan or agreement:

1. Is contrary to law.

2. Inequitable to the stockholders of any domestic insurer involved.

3. Would substantially reduce the security of and service to be rendered to policyholders of the domestic insurer in this state or elsewhere.

C. If the director does not approve the plan or agreement he shall so notify the insurer in writing specifying his reasons therefor.

APPENDIX B

EXCERPTS FROM: SEC, REPORT ON THE STUDY AND INVESTIGATION OF THE WORK, ACTIVITIES, PERSONNEL, AND FUNCTIONS OF PROTECTIVE AND REORGANIZATION COMMITTEES, PART VII (1938)

The text of the report at p. 249 reads as follows:

"But although offers to exchange securities of one company for the securities of another, as in the case of Equity, are subject to these requirements of the Act, there are important types of voluntary plans which are not. For example, Section 3 (a) (9) of the Act specifically exempts securities 'exchanged by the issuer with its existing security holders exclusively where no commission or other remuneration is paid or given directly or indirectly for soliciting such exchange.' Furthermore, the registration and prospectus provisions of the Act ordinarily are not applicable to mergers, consolidations or sales of assets effected pursuant to the provisions of typical state statutes.[172]"

To this text is appended footnote 172 which reads as follows:

"[172]Although the Act is applicable to many reorganization situations, as, for instance, the solicitation of deposits of securities with protective committees, and the offering of new or modified securities in exchange for outstanding issues (where such offerings are not specifically exempted by Section 3 (a) (9)) its provisions were designed primarily to establish standards of disclosure in new financing and its mechanics were specifically adapted to that end. The registration and prospectus provisions of the Act are not applicable to such specialized reorganization situations as those presented where stockholders' proxies or assents are solicited in approval of the typical merger, consolidation, or sale of assets.

"Under Section 5 of the Act the registration and prospectus requirements apply where instrumentalities of interstate commerce or the mails are used to 'sell' securities. Section 2 (3) defines the term 'sell' to include 'every contract of sale or disposition of, attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security, for value. * * *.' The Commission's view has been that it is essential to a 'sale' under Section 2 (3) that the prospective purchaser

have the right individually and voluntarily to elect whether or not to purchase. In the case of the typical consolidation, merger, or sale of assets, this essential element of volition on the part of the individual shareholders is absent. The vote of a specified percentage of the stockholders whose proxies or assents are solicited will bind all to accept the new securities, subject only to such rights to appraisal and payment as may be afforded dissenters by state law or by provision in the certificate of incorporation. In casting their votes for or against the plan, the stockholders are not individually entering a contractual relationship, but are exercising (or are being bound by the exercise of) powers held by virtue of the legal relationship of the stockholders in their corporation.

"Moreover, the results of a contrary interpretation of the application of the Securities Act to consolidations, mergers, and sales of assets illustrate the inadaptability of its merchanics to such transactions. Such reorganizations in the case of consolidations and sometimes in the case of sales of assets contemplate the distribution to stockholders, in exchange for their holdings, of securities of a new corporation which would be formed only after the stockholders' approval of the plan had been secured. It is evident that if any protection is to be afforded stockholders by the registration and prospectus requirements of the Act, they must apply to the solicitation of binding proxies or assents from these stockholders. However, since the Act requires that the registration statement be signed by the 'issuer' and its principal executive officers, it is likewise evident that until there is an issuer in being no registration can be effected; thus, the registration provisions cannot apply at this time. Likewise, it is clear that registration of the securities of the new corporation after it was formed would be useless as a protection to security holders of the consolidating or selling corporations. At that time, their proxies already would have been secured; the vote would have been taken; and the plan would have been approved and become binding on the stockholders. Section 5 (a) (2) requires, however, that a registration statement be in effect if any security is carried through the mails or by any instrumentality of interstate commerce 'for delivery after sale.' Therefore, if the consolidation or sale of assets were deemed to involve a 'sale' of securities of the new corporation, Section 5

(a) (2) of the Securities Act would necessitate the registration of these securities before their distribution, and Section 5 (b) (2) would require that their delivery be accompanied or proceded by a prospectus meeting the requirements of the Act. But the stockholders would already be bound to take the securities. In other words, the only protection which the Securities Act purports to afford—the protection of adequate disclosure—would be afforded at the point of time when its utility was least.

"The Commission's views with respect to the application of the registration requirements of the Act to mergers, consolidations and sales of assets have been set forth in a note to its 'Rules As to the Use of Form E-1' for 'Securities in Reorganization.' The note states:

'The Commission deems no sales to stockholders of a corporation to be involved, within the meaning of the definition quoted in Rule 5 (2), [*i. e.*, within the meaning of Section 2 (3) of the Act] where, pursuant to the statutory provisions or provisions contained in the certificate of incorporation, there is submitted to the vote of such stockholders a proposal for the transfer of assets of such corporation to another person in consideration of issuance of securities of such other person, or a plan or agreement for a statutory merger or consolidation, provided the vote of a required favorable majority.

'(a) will operate, so far as the corporation the stockholders of which are voting is concerned, to authorize the transfer or to effectuate the merger or consolidation (except for the taking of action by the directors of the corporations involved and for compliance with such statutory provisions as the filing of such plan or agreement with the appropriate state authorities), and

'(b) will bind all stockholders of such corporation, except to the extent that dissenting stockholders may, under statutory provisions or provisions contained in the certificate of incorporation, be entitled to receive the appraised or fair value of their holdings.

'The Commission deems it immaterial in these circumstances whether the person the securities of which are to be issued is in existance or not; whether, if such person is in existence, the plan, agreement or proposal is submitted by or with its au-

thority; or whether, in the case of transfer of assets, such securities are to be issued to stockholders directly or are to be distributed to them as a liquidating dividend or otherwise.

'When, in accordance with this Note, submission of a plan, agreement, or proposal to the vote of stockholders involves no sale to them, the Commission deems no sales to be involved in the delivery of securities to such stockholders.

'Accordingly, neither the submission to the vote of stockholders of a plan, agreement or proposal of the character specified in this Note, nor the delivery of securities thereunder to such stockholders, requires the registration of such securities or the delivery of a prospectus meeting the requirements of Section 10 of the Act.'"